



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,001	03/12/2004	Mark F. Bares	M297.12-0312	8774

27367 7590 08/09/2005

WESTMAN CHAMPLIN & KELLY, P.A.
SUITE 1600 - INTERNATIONAL CENTRE
900 SECOND AVENUE SOUTH
MINNEAPOLIS, MN 55402-3319

EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
----------	--------------

3671

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,001

Applicant(s)

BARES ET AL.

Examiner

Alexandra K. Pechhold

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-11,13-20,22-28,31 and 33-43 is/are allowed.
- 6) ☒ Claim(s) 12 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (US 5,860,231) in view of Orbach et al (US 5884,204).** Lee discloses a system comprising:

- a mechanical arm, inherently disclosed as the boom that attaches to the working members (see generally Col 2, lines 15-17 and Col 3, line 65, though not shown),
- an attachment member, disclosed as the bucket (Col 1, line 32, Col 3, line 65) tiltably mounted about a pivot joint,
- an actuator, disclosed as actuators (7), operable connected to the boom,
- a power system, disclosed as hydraulic pump in claim 1, operably connected to the actuator (see claim 1),
- an electronic control, seen as controller (4), operatively connected to the power system and comprising an automatic vibration mechanism, disclosed as automatic vibration switch in claim 1 (Col 5, lines 57-60),
- an operator interface, disclosed as the control lever used by an operator in claim 1 (Col 5, lines 53-54),

- wherein the system comprises a default state, disclosed as a normal operation mode (Col 4, lines 20-25), and an activation state, disclosed as an auto-vibration operation (Col 4, lines 25-28).

Lee fails to disclose the automatic vibration mechanisms as comprising an algorithm. Orbach teaches a control circuit (64) using an algorithm to regulate the movement of implement (44) in an active state (186) (see Col 12, lines 9-29). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the automatic vibration mechanism of Lee to use an algorithm as taught by Orbach, since an algorithm can provide the necessary calculations to achieve a desired position by taking into account several factors, as Orbach describes in column 12, lines 9-29.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claim 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (US 5,860,231) in view of Kruse (US 3,061,117).** Lee discloses the limitations of the claimed invention as discussed with respect to claim 21 above. Lee fails to specifically disclose the activation state comprising the attachment member undergoing a minimum load, wherein the minimum load is detected by a hydraulic pressure gauge. Kruse

Art Unit: 3671

teaches a hydraulic loader having a weight indicating pressure gauge (12) for indicating the weight of the material in the scoop (Col 1, lines 42-72, Col 2, line 72). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the activation state in Lee to be to reflect a minimum load, wherein the minimum load is detected by a hydraulic pressure gauge as taught by Kruse, since the desired time at which the operator chooses to activate the auto-vibration switch (3) can be the time when there is a minimum load if at such moment the vibration is required for the application, and furthermore Kruse states in column 1, lines 35-50 that a pressure gauge can accurately indicate the weight, so that overloading does not occur.

Allowable Subject Matter

5. Claims 1, 3-11, 13-20, 22-28, 31, and 33-43 are allowed.

Response to Arguments

6. Applicant's arguments regarding the amendment to claim 1 is persuasive. But the previously indicated allowable subject matter (in dependent claims 12 and 21) is being withdrawn, and those claims (which are now amended into independent form) are being rejected in light of an updated search. Accordingly, this Office Action is made non-final.

Art Unit: 3671

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (571) 272-6994. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (571) 272-6998. The fax phone number for this Group is (703) 872-9306.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

AKP
8/3/05